



## UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/735,193	12/11/00	ABDULLOVSKI	F

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EXAMINER  
WEINSTEIN, S

ART UNIT 1761 PAPER NUMBER 4

DATE MAILED: 06/11/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No.	09/735193	Applicant(s)	ABDULLOVSKI
Examiner	S. WEINSTEIN	Group Art Unit	1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

### Status

- Responsive to communication(s) filed on \_\_\_\_\_
- This action is FINAL.
- Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

### Disposition of Claims

- Claim(s) 1, 2 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- Claim(s) \_\_\_\_\_ is/are allowed.
- Claim(s) 1, 2 is/are rejected.
- Claim(s) \_\_\_\_\_ is/are objected to.
- Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

- See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.
- The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- The specification is objected to by the Examiner.
- The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- All  Some\*  None of the CERTIFIED copies of the priority documents have been received.
- received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413
- Notice of Reference(s) Cited, PTO-892  Notice of Informal Patent Application, PTO-152
- Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

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### **DETAILED ACTION**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reference U' in view of Reference V' and Reference V", further in view of Reference U,W,X,N and applicant's admission of the prior art.

In regard to claim 1, Reference U' discloses a combination for the sale of tortilla chips and condiments for the chips comprising a bag containing chips and a smaller condiment containing package smaller than the bag and wherein the smaller package is comprises a cup shaped member. Note how Reference U' refers to the "salsa cup in bag. "Reference V" further confirms that the product of Reference U' is an outer bag containing both the chips and salsa. Reference V" can be relied on as further evidence that it was conventional to package both tortilla chips and a container of Salsa in a bag. Claim 1 recites that the bag is plastic (note the spelling error in line 3 of claim 1 ). It is, of course, notoriously old in the food art to employ plastic as the packaging material for use in bag making. Plastic bags have been used to package snacks for many years. Applicant's admission of the prior art on page 5, para 2 of the specification also acknowledges the conventionality of employing plastic for bags. To modify the combination and employ a conventional material of construction for its art recognized and applicants intended function

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would therefore have been obvious. Claim 1 also recites that the smaller package is cup shaped having an overlay that is air tight. Reference U' teaches the smaller <sup>package</sup> is a cup. The cup would have to have a cover or the contents would fall out of the cup. In any case, as evidenced by applicant's admission of the prior art, applicant is not the inventor of the smaller package. Page 1 of the specification states that applicant employs one of two industry wide type of condiment containers termed the souffle type. These cups, including air tight covers, have been used for years to package various sized servings of jelly, butter, honey, cream, etc. To modify the combination and substitute one conventional package structure for another conventional package structure, for its art recognized and applicant's intended function would therefore have been obvious. McDonalds has used these packages for years for both dispensing and dipping sauces and other condiments for their food, for example with their Chicken McNugget product. Also, a major pizza delivery franchise has included such cups with their pizza and bread sticks for dipping the bread sticks into the sauce in the containers

Reference V can be relied on as further evidence of the conventionality of providing an outer bag containing both snack chips and a smaller package of condiment. Reference U is relied on as further evidence of a single package of tortilla chips and dip; Reference W is relied on as further evidence of packaging a condiment in a separate package along with taco chips; and References X and N are <sup>relied</sup> ~~lied~~ on as further evidence of packaged snack chips and a separate package of condiment.

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The remainder of the references cited on the USPTO 892 forms are cited as art of interest.

Any inquiry concerning this communication should be directed to Mr. WEINSTEIN at telephone number (703) 308-0650.

Weinstein/af

May 29, 2001  
6/5

*Steven Weinstein*  
STEVEN WEINSTEIN  
PRIMARY EXAMINER  
ART UNIT 122 / 1761  
6/11/01